IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8898 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GHANSHYAM SOHANLAL SHARMA

Versus

DISTRICT MAGISTRATE

Appearance:

1. Special Civil Application No. 8898 of 2004

MR NM KAPADIA for Petitioner No. 1

MS HB PUNANI, AGP for Respondent No. 1-3

RULE SERVED for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE C.K.BUCH

Date of decision: 06/12/2004

ORAL JUDGEMENT

1. Heard ld. counsel Mr. NM Kapadia for the petitioner who is the brother of the detenu. By this petition under Article 226 read with Articles 21 & 22(5) of the Constitution of India, the petitioner who is the

brother of the detenu has challenged the legality and validity of the order of detention dated 21.05.2004 passed by the District Magistrate, Surat, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act) against the petitioner-detenu. The detenu has been branded as "boot-legger" as defined under Sec.2(b) of the PASA Act.

2. The grounds for detention supplied to the detenu petitioner indicate that the detenu was found involved in seven different offences punishable under Sections 66B, 65E,F,C,D, 70,81 116(2) of the Bombay Prohibition Act, all registered with Bardoli Pro. Police Station between 28.01.2004 and 12.03.2004. It is disclosed from the grounds of detention conveyed to the petitioner detenu that the detenu is responsible for selling rotten gur, alum to the persons indulging in the activities of manufacturing country-made liquor. It is not the case of the prosecution in any of the cases registered against the detenu that the detenu himself was actively found involved in manufacturing of country made liquor. Without commenting upon the requirement of any permit or licence for selling gur or alum, it emerges that the petitioner even as per the papers placed by the sponsoring authority is running a grocery shop. No actual country-made liquor was recovered from the present detenu and it is also not the case of the detaining authority. With this set of facts, at is argued by ld. counsel Mr. NM Kapadia for the petitioner detenu that the order should be held on the ground of delay caused in passing the order of detention.

3. The petitioner detenu has though challenged the order of detention on various grounds, but ld. counsel Mr. Kapadia for the detenu has focussed his arguments on the ground of delay in passing the order of detention and that too on un-explained delay. There is no affidavit on record from the other side. The last case registered against the petitioner is on 12.03.2004 and the order of detention is passed on 21.05.2004. Thus, there is a delay of about 2 months and 9 days. This delay ought to have been explained reasonably by the other side by furnishing details. It is also pertinent to note that no other record other than the papers of chargesheet of all the seven cases were placed before the detaining authority. It was also possible for the sponsoring authority to place relevant papers before the detaining authority at the earliest if really preventive measures were required tobe taken immediately. The Court is satisfied with that there is no explanation much less reasonable explanation in absence of any affidavit by the ld. District Magistrate for not passing the order of

detention in couple of hours or days after receipt of the papers from sponsoring machinery. Unexplained delay of about 2 months 9 days by the detaining authority vitiates the order of detention and it is rightly argued that it is violative of Articles 21 and 22(5) of the Constitution of India, as per settled legal position. So, on this ground alone, petition requires to be allowed.

4. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 21.05.2004 passed by the District Magistrate, Surat is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

[C. K.BUCH, J]

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